

**Colorado Department of Public Health and Environment  
Health Facilities and Emergency Medical Services Division  
Policy Manual**

Subject: **Guideline: Not Citing Low Level Deficiencies that were Effectively Remedied Prior to Exit when Conducting Licensure Inspections/Complaint Investigations**

Date: December 14, 2012. Effective January 1, 2013

## **SUMMARY**

State statute prohibits Health Facilities and Emergency Medical Services Division (“Division”) surveyors from citing a deficiency that is an isolated event that does not have negative outcome or potential negative outcome if the deficiency is effectively remedied during the survey.

## **LEGAL AND REGULATORY AUTHORITY**

C.R.S. § 25-1.5-103(1)(a)(I)(E), which reads:

The department shall not cite as a deficiency in a report resulting from a survey or inspection of a licensed health facility any deficiency from an isolated event identified by the department that can be effectively remedied during the survey or inspection of the health facility, unless the deficiency caused harm or a potential for harm, created a life- or limb-threatening emergency, or was due to abuse and neglect.

## **APPLICABILITY**

This guideline applies to deficiencies that would be cited under licensure during:

1. initial surveys.
2. renewal surveys.
3. complaint investigations.

## **POLICY**

The Division shall not cite a low level deficiency under the licensure program if the deficiency was effectively remedied prior to exit. For the purposes of this guideline, a low level deficiency:

1. is an isolated event;
2. is effectively remedied during the survey;
3. is not a deficiency that negatively impacts the patient/resident because it:
  - a. causes harm, or
  - b. causes potential for harm, or
  - c. creates a life or limb threatening emergency, or
  - d. results from abuse, or
  - e. results from neglect

Examples of low level deficiencies are listed below. The examples are provided as general guidance with the understanding that additional details to the fact patterns could mean that the deficiencies no longer qualify as low level deficiencies.

- A required posting is temporarily not on the wall because the wall was freshly painted. The required posting is repositioned prior to survey/complaint investigation exit.
- A light bulb is burned out, and through observation and interview, the surveyor can verify that a work order was placed to have the bulb replaced. The facility replaces the bulb by the end of the day, prior to survey/complaint investigation exit.
- The Department requires a written policy that is not complex in nature (e.g., daily trash removal), and through observation and interview, the surveyor confirms that the policy and procedures were conveyed to staff, but the facility cannot find a written copy of the policy. The facility is able to produce the written policy prior to survey/complaint investigation exit.
- A medical proxy form was not signed by the physician for a resident with advanced dementia, but was signed by all other parties. A physician signature was obtained for the form prior to survey/complaint investigation exit.

## **PROCEDURE**

This procedure contains the following elements:

- Determining whether the violation is a low level deficiency.
- Ensuring that the violation is effectively remedied prior to exit.

### **1. Determining that a Violation is a Low Level Deficiency**

Division surveyors should use the following inquiries to determine if the deficiency is a low level deficiency that should not be cited.

#### ***Is it an isolated event?***

Definition: An isolated event is a violation that is a single instance.

Probe: is the deficiency a) part of a pattern of deficient practice during the current survey or past survey? b) indicative of a systemic failure (i.e., several low level violations that are seemingly isolated, but when viewed together indicate a larger problem). If the answer to (a) and (b) is “No” then the violation is an isolated event.

#### ***Does the deficiency negatively impact the resident/patient?***

Definition: The definitions of actual harm; life or limb threatening emergencies; and abuse and neglect are fairly self-explanatory. Potential harm is any deficient practice where harm has not occurred *yet*, but the practice can be linked to the likelihood of future physical or psychological harm. An example is a client record that does not include sufficient information to determine whether medications have been administered timely or storage of milk at inadequate temperatures.

Probe: Does the deficiency: a) result in actual harm, b) create a life or limb threatening emergency? c) result from abuse or neglect? or d) result in potential harm? If the answer to (a), (b), (c) and (d) is “No” then the deficiency did not negatively impact the patient/resident.

## **2. Ensuring that the violation is effectively remedied prior to exit**

Definition: A deficiency is remedied effectively if the deficient practice is removed and it is clear that there are systems in place to ensure that it would be remedied promptly upon reoccurrence. In addition, the effective remedy must be in place and the facility must inform the health survey team of the remedy prior to exit.

Probe: a) Does the facility have mechanisms in place that indicate that upon recurrence, the deficiency would be promptly identified and corrected? b) Was the deficiency remedied immediately or prior to exit? c) Did the facility inform the health survey team of the remedy prior to exit? If the answer to (a), (b) and (c) is “Yes” then the violation was effectively remedied during survey.

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Nancy McDonald, Division Director

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Date